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court held that the plaintiff was deprived of property by having two poles with nine wires strung on them about fifty feet above the ground placed in the street alongside his lot, the fee of which street was in the city, and that the plaintiff was entitled to have the defendant perpetually enjoined and to a mandatory injunction for the removal of the poles and wires. This decision is a logical outcome of the theory that the city has no beneficial interest in the street of which it owns the fee and it follows that any additional burden, not intended by the original donor will be a deprivation of the abutting owner's beneficial interest.

It must have been the intention of the legislature in vesting the fee of the streets in the city, to give the city an opportunity to put the streets to new uses which it considered beneficial to the welfare of the city, without the opposition that had been experienced when the fee of the street was in the abutting owner, and the construction of the statute here given makes that action of the legislature useless. The abutting owner has as much ground to object to any additional burden as he had when he owned the fee. There was in the principal case no appreciable deprivation of the plaintiff's right of ingress and egress nor of his right to enjoy the light and air. It is no reason for the decision to say that if this act was allowed the wires and poles might be increased until the plaintiff was entirely deprived of light and air, because as soon as there was any appreciable deprivation the plaintiff would have his remedy, if it was held he had only an easement in the street.

The court at various places in the opinion refers to the interest of the city as a qualified fee and to the interest of the abutting owner as an incorporeal hereditament, and concludes it is idle to discuss at length the character of the right of the abutting owner, but a fair inference from what is said leads to the conclusion that the abutting owner is held to have all the beneficial interest in the street not held for street purposes proper for the public. The decision ignores the growing needs of a city and a city population which demand that the streets be put to new and unusual uses and goes beyond the decisions of the other States, *R. R. Co.* v. *Bingham* (1889), 87 Tenn. 522.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—POWER OF LEGISLATURE TO MAKE EVIDENCE CONCLUSIVE.—In *Missouri, K. & T. Ry. Co.* v. *Simonson* (1902), 68 Pac., 653, the Supreme Court of Kansas has held unconstitutional, as a violation of the clause insuring due process of law, a statute making the specification of weights in bills of lading issued by railroad companies conclusive evidence of the correctness of such weights. While the legislature has general power of control over the rules of judicial evidence its competence does not extend, it is said, to the absolute exclusion of that which proves a case or the compulsion to receive that which is false. As pointed out by the able dissenting opinion, however, the cases cited as authority are hardly relevant to the question at issue. The court relied largely on the rule that the legislature cannot make a tax deed conclusive evidence to bar the owner. *Corbin* v. *Hill* (1866), 21 Ia 70; Blackwell, Tax Titles, 97. In *Wantlan* v. *White* (1862), 19 Ind. 470, which was also cited, a statute making the age given by a minor en-

listing in the army conclusive evidence thereof was held not to prevent his legal guardian from proving his real age. In *Zeigler* v. *South & North A. Ry. Co.* (1877), 58 Ala. 594, a bill imposing upon railroads absolute liability for stock killed by their trains was declared invalid as depriving the companies of due process of law. In *Chicago M. & St. P. Ry. Co.* v. *Minnesota* (1889), 134 U. S. 418, the Supreme Court for the same reason held unconstitutional a legislative enactment that the schedule of rates for transportation published by the Board of Railroad Commissioners should be conclusive as to what were just and reasonable.

These decisions tend to show that the legislature cannot arbitrarily make conclusive evidence of a fact anything which, in the nature of things, does not reasonably tend to prove it. But manifestly they are not authority for saying that it cannot compel a party to abide by his own written admission. A bill of lading, being a receipt, involves a declaration by both parties that its terms are correct. The statute merely gives this declaration the same force as is given the contract of the parties by the rule against parol evidence. The similarity is especially cogent in the case of a bill of lading, since it is at once a contract and a receipt. Is it valid, then, to make the instrument conclusive upon the parties when treated as a contract, but invalid to do so when considered a receipt? That the Kansas Court follows, rather than leads, in its deduction from these cases is apparent from the carelessly broad statements of writers that the legislature "cannot render evidence conclusive or debar the opposite party from adducing proof in reply." Hare, Constitutional Law, 800. Judge Cooley is more guarded, however, clearly distinguishing between such a case as that at issue and that of tax deeds, for instance. He says: "Except in those cases which fall within the familiar doctrine of estoppel at the common law, or other cases resting upon the like reasons, it would not, we apprehend, be in the power of the legislature to declare that a particular item of evidence should preclude a party from establishing his rights in opposition to it."—Constitutional Limitations, 6th ed., 452. Clearly, the case under discussion comes within his exception. Nor is precedent for a decision in harmony with these views entirely lacking. In *County seat of Linn Co.* (1875), 15 Kan. 500, a statute was held constitutional which made the number of votes cast conclusive evidence of the number of electors in a county, the court, *per* BREWER, J., saying: "The legislature could not arbitrarily make conclusive evidence of the number of voters any list or roll which, in the nature of things, has no connection with that fact. * * * But when it adopts as conclusive evidence of the fact anything which, according to the ordinary rules of human experience, reasonably tends to prove the fact, the courts are not at liberty to ignore or go behind such evidence." Even more to the point is *Insurance Co.* v. *Daggs* (1898), 172 U. S. 557. A statute made the valuation clause in an insurance policy conclusive evidence of the value in an action for the insurance money. Replying to the objection that this precluded judicial inquiry the Court said at p. 565: "It [the statute] makes no contract for the parties. In this it permits absolute freedom. It leaves them to fix the valuation of the property. * * * It only ascribes estoppel after this is done." And, on p. 566, the Court con-

tinues: "The cases cited by plaintiff in error which hold that the legislature may give the effect of *prima facie* proof to certain acts, but not conclusive, do not apply. They were not of contracts nor gave effect to contracts. It is one thing to give effect to the convention of parties, entered into under the admonition of the law, and another thing to give to circumstances, it may be accidental, conclusive presumption and proof to establish and force a result against property or liberty."